

May 6, 2008

Linda Fryant
Washington Public Employees Association
2812 Lombard Avenue Suite 106
Everett, WA 98201

RE: Director's Review Request for James Cahill v. Department of Natural Resources (DNR)

Dear Ms. Fryant:

On February 29, 2008, Karen Wilcox, Director's Review Coordinator, sent you a letter addressing the timeliness of Mr. Cahill's Director's review request. In a March 4, 2008 letter, you indicated that DNR's allocation determination letter was dated January 9, 2008, but stated Mr. Cahill did not receive the letter until January 18, 2008. You also included supporting documents (Exhibits A – F).

On March 25, 2008, I sent a letter to Senior Human Resource Consultant Helen McSharry at DNR, indicating that I needed both parties to respond to the issue of timeliness. In an April 18, 2008 letter, Ms. McSharry stated: "The allocation determination letter was sent to Mr. Cahill's home address on January 9, 2008."

Article 37.2 of the Collective Bargaining Agreement (CBA) between the State of Washington and the Washington Public Employees Association provides that an employee "may appeal the agency decision to the Director of the Department of Personnel within thirty (30) calendar days of being provided the results of a position review or the notice of reallocation." Article 37.2 is consistent with WAC 357-13-080(1), which requires employees to request a Director's review within thirty calendar days "of being provided the results of a position review or the notice of reallocation." The CBA does not address service of notice. Therefore, the Civil Service Rules apply.

WAC 357-04-105(1) provides, in part, the following:

. . . when the civil service rules require an . . . employee . . . to receive notice, **the notice must be provided** by personal delivery, United States mail, or by telephone facsimile transmission **with same-day mailing of copies** unless the specific rule requiring notice allows for alternative methods of providing notice such as electronic mail ("e-mail"), state mail service, commercial parcel delivery or campus mail service (**emphasis added**).

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WAC 357-04-105(2) then provides, in part, the following:

. . . service of notice upon parties will be regarded as completed when personal delivery has been accomplished; or upon deposit in the United States mail, properly stamped and addressed; or upon production by telephone facsimile transmission of confirmation of transmission. When a specific rule allows alternative methods of service, service upon parties will be regarded as completed when it is actually received by the party to which notice is being provided.

In your March 4, 2008 letter, you referenced the date Mr. Cahill received his allocation determination letter and included documentation to support his assertion that he received the letter on January 18, 2008. However, the service of notice, as indicated by WAC 357-04-105(2), is the date the letter is deposited in the United States mail. Based on Ms. McSharry's indication that Mr. Cahill's letter was deposited in the mail on January 9, 2008, Mr. Cahill was provided (served with) the allocation decision on that date. The deadline for requesting review elapsed on February 8, 2008. Since Mr. Cahill's request was not received until February 13, 2008, it was untimely. Therefore, the matter is closed.

Either party may appeal the Director's determination on timeliness to the Personnel Resources Board (Board) by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC. Please refer to the Collective Bargaining Agreement regarding appeal rights to the Personnel Resources Board.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination. The address for the Personnel Resources Board is 2828 Capitol Blvd., P.O. Box 40911, Olympia, Washington, 98504-0911.

If no further action is taken, the Director's determination becomes final.

Sincerely,

Teresa Parsons, SPHR
Director's Review Program Supervisor
Legal Affairs Division

c: James Cahill